



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

EN:AH/KM
F.#2010R02047

*271 Cadman Plaza East
Brooklyn, New York 11201*

June 13, 2012

By Email

John L. Almanza
United States Probation Officer
Eastern District of New York
147 Pierrepont Street
Brooklyn, New York 11201

Re: United States v. Anthony Romanello
10 Cr. 929 (S-1) (ILG)

Dear Officer Almanza:

The government respectfully submits this letter in response to the defendant Anthony Romanello's objections to the Presentence Report ("PSR") dated April 14, 2012 ("Def's Ltr."). For the reasons stated below, the government disagrees with the defendant's objections.

BACKGROUND

As noted in the PSR, the government and the defendant entered a plea agreement in this case pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure (the "Agreement"). Pursuant to the terms of the Agreement, the government agreed to recommend that the defendant be sentenced within a range of 10 to 16 months' imprisonment. PSR ¶ 3; see also Agreement ¶ 2. The Agreement, however, is not binding on the Probation Department or the Court, and does not bear upon the correctly calculated Guidelines range applicable to the defendant. See Agreement ¶ 3.

RESPONSE TO DEFENDANT'S OBJECTIONS

The government addresses the various objections raised by defense counsel by category below:

A. Paragraphs 5 - 16

The defendant states that paragraphs 5 through 16 of the PSR contain historical information concerning the Genovese crime family that is inapplicable to the defendant because he "did not allocute to being a member of the Genovese Family, but [instead] admitted committing Racketeering Acts Two and Three as part of, and in furtherance of, an associated-in-fact enterprise." Def's Ltr. at 1. The information in paragraphs 5 through 16 is relevant to the crime to which the defendant pleaded guilty and thus properly part of the PSR. Moreover, the defendant's assertion is contradicted by the plea colloquy, in which the defendant admitted his association with the Genovese crime family.

Prior to taking the defendant's plea allocution on January 10, 2012, the Court stated as follows:

I'm going to be referring to the enterprise as I go through what it is the government would have to prove, and when I say the enterprise, what I'm referring to Mr. Romanello . . . is essentially the Genovese family which has been charged as being the enterprise So, between January of 1990 and July of 2006, the government would have to prove that you were associated with that enterprise. The government would have to prove that that enterprise, the Genovese family, had an ongoing formal or informal structure that was defined in the first 10 or 11 paragraphs of the indictment: the boss, the underboss and captains and crews and all the rest. The government would have to prove all that. The government would have to prove that your association with that enterprise was meaningful, that you were helpful to it, you knew what it was about, you were helpful in continuing and furthering the objectives of the enterprise as an associate of it.

Transcript of Plea Hearing ("Tr.") at 24-25, attached hereto. After having thus defined the "enterprise" as the Genovese crime

family, the following colloquy took place between the Court and the defendant:

Court: Let me ask you, Mr. Romanello. I'm using the word "enterprise." Were you associated with that enterprise that I have defined for you sometime between 1990 and 2006?

Romanello: Yes, Your Honor.

Tr. at 26-27.

B. Paragraphs 2, 18 - 21

The defendant objects to the language in the PSR identifying the victim of Racketeering Act Three as "Vito Napolitano," arguing, as he did prior to entering his plea, that the victim of the extortion was someone else. Def's Ltr. at 1. The PSR accurately reflects the proof the government was prepared to present at trial with respect to this racketeering act. Further, the government notes that at the outset of the defendant's plea hearing, defense counsel stated that the defendant was "going to allocute to a no name victim." Tr. at 4. The Court then asked: "What I understand from Mr. McMahon, he is going to be allocuting to Racketeering Act Three to John Doe and not to Vito Napolitano, is that the idea?" Id. The government responded: "That is the idea." Id. Thereafter, the Court summarized the allegations in Racketeering Act Three, identifying the victim as "somebody who was known to the grand jury as John Doe No. 2," after which the defendant answered "Yes" when asked if the Court had accurately summarized the crime the defendant and one or more others agreed to commit. Id. at 27-28.

C. Paragraphs 22, 23, 26, 45-50, 52, 55, 56, 57, 58, 60

The defendant objects to the inclusion of Racketeering Act One (as to which he did not plead guilty) as relevant conduct for purposes of the calculation of his applicable Guidelines range. Under the Sentencing Guidelines, however, the Court must consider all relevant conduct, whether or not it resulted in a conviction, in order to arrive at the applicable Guidelines range. See U.S.S.G. § 1B1.3. Conduct relevant to a racketeering conviction includes all conduct reasonably foreseeable to the defendant in furtherance of the racketeering enterprise. See United States v. Ruggiero, 100 F.3d 284, 292 (2d Cir. 1996); United States v. Ayala, 75 F. Supp. 2d 126, 129-30 (S.D.N.Y. 1999); see, e.g., United States v. Upshaw, 114 Fed. Appx. 692 (6th Cir. 2004) ("[I]n calculating the base offense level for a RICO conspiracy conviction under the Sentencing Guidelines,

underlying racketeering activity is relevant conduct for the purposes of the sentencing guidelines and need only be proven by a preponderance of the evidence."). It was, therefore, not error for the Probation department to include the conduct underlying Racketeering Act One in the Guidelines calculation.

D. Paragraph 73

The defendant states that his sentence of conditional discharge on July 14, 1980 for operating a motor vehicle while impaired by alcohol in violation of New York law should not be counted toward his criminal history category because it was imposed more than ten years before the commencement of the instant offense. Def's Ltr. at 2; see U.S.S.G. § 4A1.1(b), application note 2. Because the defendant pled guilty to having conducted and participated in the affairs of the Genovese crime family between January 1990 and July 2006, however, the defendant's sentence on July 14, 1980 is properly counted because it was "imposed within ten years of the defendant's commencement of the instant offense." See U.S.S.G § 4A1.2(e)(2).

CONCLUSION

For the reasons set forth above, the government disagrees with the defendant's stated objections. The government also stands by its agreement to recommend that the defendant be sentenced within a range of 10 to 16 months' imprisonment. See Agreement ¶ 2.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: /s/ Amanda Hector
Amanda Hector
Kristin Mace
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cc: Hon. I. Leo Glasser (via ECF)
Gerald McMahon, Esq. (via ECF)
Mathew Mari, Esq. (via ECF)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA, : 10-CR-929

Plaintiff, :

-against- : United States Courthouse

ANTHONY ROMANELLO, : Brooklyn, New York

Defendant. : January 10, 2012

: 10:30 o'clock a.m.

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TRANSCRIPT OF PLEA
BEFORE THE HONORABLE I. LEO GLASSER
UNITED STATES SENIOR DISTRICT JUDGE.

APPEARANCES:

For the Government: LORETTA E. LYNCH
United States Attorney
BY: AMANDA HECTOR
M. KRISTIN MACE
JACK DENNEHY
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For the Defendant: GERALD McMAHON
26 Broadway - 18th Floor
New York, New York 10004

MATHEW J. MARI
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New York, New York 10005

Court Reporter: Charleane M. Heading
225 Cadman Plaza East
Brooklyn, New York
(718) 613-2643

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

Proceeding

2

1 THE CLERK: This is criminal cause for pleading.
2 Docket number 10-CR-99, USA versus Anthony Romanello.

3 Counsel, please state your name for the record.

4 MS. HECTOR: Good morning, Your Honor. Amanda
5 Hector and Kristin Mace for the government.

6 THE COURT: Good morning.

7 MR. MCMAHON: Good afternoon. Gerald McMahon and
8 Matthew Macri for the defendant who is present here today.

9 THE COURT: Good morning.

10 MR. MCMAHON: Your Honor, I first would like to
11 thank the government for having an open mind through this
12 lengthy process that has enabled us to arrive at the point
13 where we are today.

14 We have a written plea agreement which, along with
15 an allocution, if both are acceptable to the Court, will
16 result in a resolution of this case.

17 MS. HECTOR: That's correct, Your Honor. In light
18 of recent developments including the health concerns
19 associated with the critical witness for the government, we
20 have arrived at a plea agreement in this case.

21 THE COURT: I just had two, not questions, but
22 observations with respect to the plea agreement, a copy of
23 which was e-mailed to me.

24 MR. MCMAHON: Your Honor, I think it changed after
25 it was initially sent out.

Proceeding

3

1 MS. HECTOR: There were a few slight changes, tweaks
2 that occurred last night between the parties. I have a new
3 copy.

4 THE COURT: Do you want to tell me what they are?

5 MS. HECTOR: Yes. The appeal waiver.

6 THE COURT: That's paragraph four?

7 MS. HECTOR: Paragraph four. It's 24 months or
8 below.

9 THE COURT: All right.

10 MS. HECTOR: The -- I'm sorry. If you go back one
11 page on page three, at the bottom of the page where our office
12 has new, brand new, what's now going to be standard language
13 in our plea agreements about the allocution, that the
14 defendant is entitled to the third point if he pleads guilty
15 today, assuming, and it adds a little language about the
16 allocution being acceptable to the government.

17 THE COURT: All right.

18 MS. HECTOR: Okay? With respect to the coverage
19 paragraph, paragraph 5A, we've clarified that the racketeering
20 acts that are included in this indictment, that this plea does
21 not bar their use as a basis for a sentencing enhancement.

22 MR. MCMAHON: But we took out that it cannot be used
23 for predicate acts.

24 THE COURT: I'm just wondering about the accuracy of
25 5A, the office is agreeing not to bring further criminal

Proceeding

4

1 charges with respect to Racketeering Act Three to which I
2 understand is going to be allocuted this morning, is that
3 right?

4 MR. MCMAHON: Racketeering Three, Your Honor, we
5 were going to allocute to a no name victim.

6 MS. HECTOR: The allocution will be to Racketeering
7 Acts Two and Three.

8 THE COURT: I understand that, but he's pleading to
9 Racketeering Act Three this morning, isn't he --

10 MS. HECTOR: Yes.

11 THE COURT: -- as one of the racketeering acts?

12 MS. HECTOR: Yes.

13 THE COURT: So you are agreeing to bring no further
14 charges with respect to Racketeering Act Three to which he is
15 pleading this morning?

16 MS. HECTOR: Yes.

17 THE COURT: As I understand it?

18 MS. HECTOR: Yes.

19 THE COURT: I'm trying to understand that.

20 What I understand from Mr. McMahon, he is going to
21 be allocuting to Racketeering Act Three to John Doe and not to
22 Vito Napolitano, is that the idea?

23 MS. HECTOR: That is the idea.

24 THE COURT: So you are agreeing not to bring any
25 further proceeding with respect to extortion against Vito

1 Napolitano?

2 MR. MCMAHON: Yes.

3 MS. HECTOR: Yes.

4 MR. MCMAHON: And the whole Queensboro incident.

5 THE COURT: Okay.

6 MS. HECTOR: And then the only other change, Your
7 Honor, is if you flip back to page four.

8 THE COURT: Before I get to that --

9 MS. HECTOR: Yes, sir.

10 THE COURT: -- as I understand it, this is going to
11 be an 11(c)(1)(B) plea, is that right?

12 MS. HECTOR: Yes.

13 THE COURT: Which makes paragraph 5(b) kind of
14 redundant, doesn't it?

15 MS. HECTOR: Well, paragraph 5(b) refers to the
16 government taking no position as to where within the
17 recommended sentencing range and I was going to point Your
18 Honor to page four.

19 MR. MCMAHON: Actually 5(b) is changed. That
20 language changed.

21 MS. HECTOR: Yes.

22 MR. MCMAHON: It used to say, "where within the
23 guideline range found by the Court." Now it says, "takes no
24 position where within the recommended sentencing range," their
25 own recommended sentencing range.

Proceeding

6

1 MS. HECTOR: Referring back to --

2 MR. MCMAHON: The 10 to 16.

3 THE COURT: Okay. I'm sorry. Ms. Hector?

4 MS. HECTOR: Sorry. Then on page four, the only
5 changes where we track the language, the statutory language of
6 11(c)(1)(B) more closely in the top paragraph which is
7 paragraph, which is number two of page four where we say
8 pursuant to federal rule of criminal procedure 11(c)(1)(B),
9 however, the government agrees to recommend that a sentencing
10 range of 10 to 16 months of imprisonment is appropriate.

11 THE COURT: Yes.

12 MS. HECTOR: And then we've added paragraph three
13 which is under the statute, the court is required to advise
14 the defendant as to that paragraph by statute and so we just
15 included it in the agreement.

16 THE COURT: Okay. Are we ready?

17 MS. HECTOR: Yes.

18 MR. MCMAHON: We are ready, Your Honor.

19 THE COURT: Would you swear Mr. Romanello.

20 THE CLERK: Please raise your right hand.

21 (Defendant sworn.)

22 THE CLERK: Could you please state your name for the
23 record?

24 THE DEFENDANT: Anthony John Romanello.

25 THE CLERK: Thank you.

Proceeding

7

1 THE COURT: Mr. Romanello, you just swore to tell
2 the truth so everything you are going to say to me this
3 morning in answer to questions that I'll be asking you and any
4 other statement you may make this morning should be truthful.

5 Are you having trouble hearing me still or do you
6 have hearing aids?

7 THE DEFENDANT: Yeah, I have both of them in.

8 THE COURT: So I've said to you, Mr. Romanello, that
9 having sworn to tell the truth, everything you are going to
10 say to me this morning should be truthful because if you tell
11 a lie after you swear to tell the truth, you may be committing
12 a crime.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: How old are you?

16 THE DEFENDANT: 74.

17 THE COURT: How far have you gone in school? How
18 much education have you had?

19 THE DEFENDANT: Third term high school.

20 THE COURT: Are you currently being treated by a
21 doctor?

22 THE DEFENDANT: Yes.

23 THE COURT: What are you being treated for?

24 THE DEFENDANT: High blood pressure and hepatitis C.

25 THE COURT: And you are taking medicines for those

Proceeding

8

1 illnesses?

2 THE DEFENDANT: Yes. Yes. Blood pressure pill and
3 interferon.

4 THE COURT: And do those medicines interfere in any
5 way with your understanding of what's going on about you?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Have you ever been hospitalized or
8 treated for any mental or emotional illness?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: You are satisfied with the
11 representation you have been receiving from Mr. McMahon and
12 Mr. Macri?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you understand why you are here this
15 morning?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You understand everything I have said to
18 you so far?

19 THE DEFENDANT: Yes.

20 THE COURT: Mr. McMahon, do you have any questions
21 about Mr. Romanello's competence to participate in these
22 proceedings?

23 MR. MCMAHON: No, Your Honor.

24 THE COURT: I will make a finding to that effect.

25 Mr. Romanello, I am told that you are going to plead

1 to a charge of racketeering conspiracy. The charge
2 incorporates a number of paragraphs which describe the
3 Genovese family as an enterprise which I'll get to shortly.

4 You have discussed all that and gone over all that
5 with Mr. McMahon?

6 And the Genovese family, family of persons who are
7 associated together in some way for the purpose of furthering
8 the objectives of that family or enterprise by committing a
9 series of crimes and it has a structure, it has a boss and an
10 underboss and consigliere and members and associates.

11 You've gone through all that, you're familiar with
12 that from Mr. McMahon?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: The charge to which I understand you're
15 agreeing to plead guilty reads that, the introductory
16 paragraphs which describe the operation and existence of the
17 Genovese family are incorporated in this charge, and it reads
18 that in or about and between January 1990 and July of 2006,
19 both dates being approximate and inclusive, within the Eastern
20 District of New York and elsewhere, you, who are also known as
21 "Rom," together with others being a person employed by and
22 associated with the Genovese crime family, an enterprise that
23 engaged in the activities that affected interstate commerce,
24 knowingly and intentionally conspired to violate Title 18
25 Section 1962(c) of the United States Code.

1 That is, you conspired to conduct and participate
2 directly and indirectly in the conduct of the affairs of that
3 enterprise through a pattern of racketeering activity as that
4 term is defined in the statute consisting of the racketeering
5 acts set out below, and you agree that a conspirator would
6 commit at least two acts of racketeering activity in the
7 conduct of the affairs of the enterprise.

8 Now, the Racketeering Acts which you've agreed to
9 plead to are Racketeering Acts Two and Three.

10 Racketeering Act Two provides that you agree to the
11 commission of a violation of the federal gambling law in that
12 in or about 1999, within the Eastern District of New York and
13 elsewhere, you, together with others, knowingly and
14 intentionally conducted, finance, manage, supervise, directed
15 and owned all or part of an illegal gambling business
16 involving policy and bookmaking which operated in violation of
17 the laws of New York State, namely, the New York Penal Law
18 Section 225.05, 225.10, and 20.00, which involved five or more
19 people who conducted, financed, managed, supervised, directed
20 and owned all or part of that business which remained in
21 substantially continuous operation for a period of more than
22 thirty days and had a gross revenue of at least \$2,000 in any
23 single day in violation of Title 18, Section 1955 of the
24 United States Code.

25 And Racketeering Act Three --

1 MR. MCMAHON: Your Honor, excuse me. I hate to
2 interrupt, but we were going to plead to Subsection C which is
3 the state gambling law part of that Racketeering Act Two, the
4 bookmaking.

5 THE COURT: The other racketeering acts with which
6 you're charged is the State gambling law, bookmaking, which
7 charges that in or about 1999, within the Eastern District of
8 New York and elsewhere, you, together with others, knowingly
9 and intentionally advanced and profited from unlawful gambling
10 activity by engaging in bookmaking to the extent that you
11 received and accepted in any one day more than five bets
12 totaling more than \$5,000 in violation of the New York Penal
13 Law.

14 And Racketeering Act Three which alleges that in or
15 about June of 1999, within the Eastern District of New York
16 and elsewhere, you, together with others, knowingly and
17 intentionally conspired to steal property by extortion and
18 that you and others agreed to obtain money by compelling and
19 inducing John Doe No. 2, an individual whose identity is known
20 to the grand jury, to deliver such property by instilling in
21 him a fear that if the property were not delivered, you and
22 others would cause physical injury to John Doe No. 2 in the
23 future in violation of the sections of the New York Penal Law
24 and United States Code.

25 Before I can accept your plea, Mr. Romanello, the

1 law requires me to make sure that you understand the variety
2 of rights that you have as you stand here this morning.

3 Are you having trouble hearing me?

4 THE DEFENDANT: No. No, Your Honor.

5 THE COURT: If there's anything that I explain to
6 you that you don't understand, don't hesitate to tell me and
7 let Mr. McMahon explain it perhaps more clearly than I did.

8 The first thing that I want to make sure that you
9 understand is that just as you have said to me in the past
10 that you're not guilty of these charges, when I ask you how
11 you plea, you can continue to say to me this morning that
12 you're not guilty of the crimes with which you are charged,
13 and if you continue to say that to me, as you have a perfect
14 right to do, there will be a trial. It will start on Tuesday
15 of next week. You'll be represented by your lawyer in that
16 trial. It will be a trial before a jury. It will be a public
17 trial. And at that trial, you'd be presumed innocent of these
18 crimes with which you are charged.

19 What that means, Mr. Romanello, is that you wouldn't
20 have to prove that you didn't commit these crimes. You
21 wouldn't have to prove anything. The government would have to
22 prove that you did commit them and the government would have
23 to prove it so that a unanimous jury of twelve people would be
24 satisfied beyond a reasonable doubt that you committed those
25 crimes.

Proceeding

13

1 Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: At that trial, you would have a right to
4 confront your accusers which means you would have the right to
5 see and face the witnesses against you and your lawyer would
6 have the right to cross-examine those persons for you and
7 you'd have the right to object to any evidence which he
8 believes the Court shouldn't hear.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And at that trial too you could, if you
12 wanted to, testify for yourself under oath. You could have
13 witnesses summoned here to testify for you. You could offer
14 such evidence at your trial as you think might be useful to
15 you, but you needn't do any of those things.

16 You have a right to remain silent at your trial, say
17 nothing and do nothing, and if you did remain silent at your
18 trial and did nothing else, I would instruct the jury that
19 they must not infer that you're guilty because you have not
20 testified on your own behalf and offered any evidence on your
21 own behalf. I would instruct the jury that you're enjoying
22 the right which the Constitution of the United States gives
23 all persons which is known as the privilege against
24 self-incrimination.

25 What that means, in more homely terms,

1 Mr. Romanello, is that a person can't be forced to convict
2 himself out of the words of his own mouth. Do you understand
3 all of that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: If you plead guilty this morning and if
6 I accept your plea, you'll be giving up all those rights that
7 I've just explained to you. There will not be a trial and the
8 government will not be required to prove that you're guilty of
9 the crimes to which I'm told you wish to plea. You will not
10 have had the opportunity to see who the witnesses against you
11 would be. A finding of guilt will be entered this morning and
12 you'll be sentenced on another day.

13 Do you understand all that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: If you were listening very carefully,
16 Mr. Romanello, you would have heard me say a minute ago that
17 if you plead guilty and if I accept your plea.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: What I had in mind when I said that was
20 the requirement which the law imposes upon me to make sure
21 that I'm accepting a plea of guilty from a person who is and
22 not from an innocent person.

23 So, I'm going to ask you some questions about the
24 crimes with which you are charged, and to the extent that you
25 answer them, you may be convicting yourself out of the words

1 of your own mouth. You may be giving up that right to remain
2 silent, that privilege against self-incrimination that I've
3 explained to you a few minutes ago.

4 Do you understand all of that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Did Mr. McMahon explain to you that the
7 statutory penalty for the crime to which you intend to plead
8 guilty is imprisonment up to 20 years? Did he tell you that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And did he also tell you that in
11 addition to any term of imprisonment, the Court could add a
12 period of supervised release of up to three years?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And did Mr. McMahon explain supervised
15 release to you?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And you believe you understand it?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Did he also tell you that the Court had
20 imposed a fine which is either \$250,000 or twice the gross
21 profits of the enterprise, the crime with which you're
22 charged, whichever is greater? Did he tell you that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Is restitution applicable here?

25 MS. HECTOR: Yes. It's in an amount to be

1 determined by the Court.

2 THE COURT: Restitution with respect to what,
3 gambling offense?

4 MS. HECTOR: The gambling offense and the victim of
5 the state extortion.

6 THE COURT: Do you know what restitution means,
7 Mr. Romanello?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Did Mr. McMahon explain it to you?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: That's mandatory, and I don't know what
12 the amount of restitution you'll be required to make is as I
13 talk to you, but that will be determined between now and the
14 time that you're sentenced.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And did he also tell you that regardless
17 of what the sentence is, you will be required to pay a special
18 assessment of \$100 that is mandatory?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Did Mr. McMahon talk to you or
21 Mr. Macri --

22 Mr. Macri, you will excuse me if I do not include
23 you in every reference to Mr. Romanello's counsel, but you can
24 assume when I say Mr. McMahon, I am inferentially including
25 you.

1 Did Mr. McMahon explain to you something that he
2 referred to as guidelines?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And he told you that there used to be a
5 time when the Court was required to impose a sentence in
6 accordance with a book known as the United States Sentencing
7 Guidelines Directive?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And did he tell you that since about
10 1987 or, I'm sorry, since about sometime in January of about
11 four years ago, the guidelines became discretionary? They're
12 not mandatory but I have to consult them. Did he tell you
13 that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And there's been some prediction as to
16 what the guidelines would be at the moment. I'm going to ask
17 whether you understood that the prediction, the estimated
18 assumption of the guideline advice would be somewhere between
19 27 and 33 months.

20 I just want to make sure you understand that
21 whatever it is you were told about, that is not binding on me.
22 But I also see that in this plea agreement, your plea is going
23 to be pursuant to a section of the law, Federal Rules of
24 Criminal Procedure, which says, in effect, that the government
25 will recommend and agree that it won't oppose a request that

1 you're making, that is, a sentence of somewhere between 10 and
2 16 months is appropriate.

3 I want to make sure you understand that that
4 agreement is not binding on me. For whatever reason may be
5 sufficient unto me, you have no right to withdraw your plea of
6 guilty if I, the Court, doesn't follow that recommendation.

7 Do you understand what that means?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Mr. McMahon explained all that to you?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Mr. McMahon, you've gone over that?

12 MR. MCMAHON: I have, Judge.

13 THE COURT: The reason I ask is Mr. Romanello is
14 looking at you for some assurance.

15 MR. MCMAHON: Yes, Judge.

16 THE COURT: As to what 11(c)(1)(B) is about. He
17 understands that?

18 MR. MCMAHON: Yes. He understands Your Honor can
19 sentence him anywhere from zero to 20 years.

20 THE COURT: Okay. I suppose I should also tell you,
21 Mr. Romanello, that whatever it is that you were told the
22 guidelines advice may be, it's not binding on me. In any
23 event, the Court can impose a sentence either below or above
24 whatever the guideline advice might be in an appropriate case.

25 You've been through all that with Mr. McMahon, yes?

Proceeding

19

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you have any questions about anything
3 I've explained to you so far about the guidelines?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Mr. McMahon, do you have any reason as
6 to why Mr. Romanello shouldn't plead to Count One,
7 Racketeering Acts Two C, was it, and 3?

8 MR. MCMAHON: No, Your Honor.

9 THE COURT: Mr. Romanello, how do you plead to the
10 crimes that I've read to you and that you are charged with?
11 Do you plead guilty or not guilty?

12 THE DEFENDANT: I plead guilty.

13 THE COURT: Is anybody forcing you to say that?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: You are telling me that voluntarily?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Yes, you are telling me that
18 voluntarily?

19 THE DEFENDANT: Voluntarily, yes.

20 THE COURT: And you have entered into one agreement
21 with the government in connection with that plea, plea
22 agreement, which I understand you have signed here just a few
23 minutes ago, is that right?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And you have gone over that agreement

Proceeding

20

1 with Mr. McMahon carefully?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: I just want to make sure that you
4 understand one or two paragraphs of the agreement.

5 Would you like me to go over the entire agreement
6 with you?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: I want to make sure you understand that
9 in paragraph four, you have agreed that you will not appeal a
10 sentence which I may impose if the sentence is not more than
11 24 months. Do you understand what that means?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And do you know what it means to give up
14 your right to appeal?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Are you giving up that right
17 voluntarily?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And that paragraph also says that you
20 have agreed that you won't file a petition pursuant to what is
21 referred to there as 28, and Section 2255 of the United States
22 Code.

23 Did Mr. McMahon discuss all that with you?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And what that means, in essence,

1 Mr. Romanello, is that you're not going to challenge the
2 validity of the proceedings beginning with the day you were
3 arrested, arraigned, up until today. You won't challenge the
4 validity of all of that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay? And you are giving up that right
7 voluntarily as well?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And then in paragraph 5, the government
10 agreed that it won't bring any further criminal charges
11 against you for your participation in the extortionate
12 collection of credit conspiracy sometime between January of
13 1990 and December of 1999, and they won't bring further
14 criminal charges against you with respect to Racketeering Acts
15 Two and Three.

16 The law requires me to approve that part of the
17 agreement. I'll reserve that part to the day I impose
18 sentence. If I disagree with that, I'll permit you to
19 withdraw your plea.

20 Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you have a copy of that agreement
23 before you? I think it was handed up to me.

24 MR. MCMAHON: Yes, Judge, we do have a copy.

25 THE COURT: Mr. Romanello, I want you to look at

1 this last page and tell me if you recognize any signature on
2 this page.

3 THE DEFENDANT: That's my signature, Your Honor.

4 THE COURT: And just above your signature,
5 Mr. Romanello, you said you've read the entire agreement, you
6 discussed it with your lawyer, you understand all of its terms
7 and you've entered into that agreement knowingly.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You certified to that when you signed
10 it, correct?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Now, if you had gone to trial,
13 Mr. Romanello, the government would have had to prove a number
14 of things, and I'm going to go over them with you and I'm
15 going to ask you a number of questions with respect to those.

16 Before I do that, you are charged with racketeering
17 conspiracy. A conspiracy, Mr. Romanello, is essentially an
18 agreement. It's an agreement between two people, two or more
19 people, you being one of them, to commit a crime.

20 If the government is to succeed in proving, had you
21 gone to trial, that you are guilty of the crime of conspiracy,
22 they would have had to prove two or three things which are
23 essentially that there was a conspiracy, that is, you agreed,
24 with one or more people, to commit a crime. The second thing
25 they would have to prove is that you were a party to that

1 agreement knowingly, voluntarily, understanding what it was
2 you were agreeing to.

3 When I say the government would have to prove there
4 was an agreement between you and others to commit a crime, I
5 don't mean to convey the idea that the government would have
6 to prove that you entered into a written agreement with other
7 people. It would be enough if they satisfied the jury that
8 you and one or more others had a meeting of the minds, a
9 common understanding, that you were going to commit a crime,
10 and depending upon the conspiracy you're charged with, it may
11 be the government would also have to prove that you or one of
12 your co-conspirators committed what is referred to as an overt
13 act, took some step toward the accomplishment of the objective
14 of a conspiracy. It's what a conspiracy is all about.

15 Do you understand that or would you like to go over
16 that with you.

17 THE DEFENDANT: No, I understand it, Your Honor.

18 THE COURT: Now, with respect to Count One, the
19 racketeering conspiracy, the government would have to prove a
20 variety of things.

21 The government would have to prove, first, the
22 existence of an enterprise. An enterprise is defined by the
23 statute, and it is essentially a group of people who are
24 associated together, associated in fact, and they're
25 associated for the purpose of accomplishing some common goal.

1 In this case, the government is charging that the
2 enterprise, the group of people who are associated together in
3 fact was the Genovese organized crime family. And the
4 Genovese organized crime family is a family or a group of
5 persons associated in fact to accomplish what is essentially
6 making money for its members and associates and making money
7 for its members and associates which is the common goal of
8 that enterprise.

9 I'm going to be referring to the enterprise as I go
10 through what it is the government would have to prove, and
11 when I say the enterprise, what I'm referring to,
12 Mr. Romanello --

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: -- is essentially the Genovese family
15 which has been charged as being the enterprise.

16 The government would have to prove that between
17 January of 1990 and July of 2006 within the Eastern District
18 of New York -- the Eastern District of New York, I'm sure
19 Mr. McMahon told you, describes the geographic area over which
20 this Court has jurisdiction. The Eastern District of New York
21 includes all of Brooklyn and Queens and Staten Island and
22 Nassau and Suffolk counties.

23 So, between January of 1990 and July of 2006, the
24 government would have to prove that you were associated with
25 that enterprise.

1 The government would have to prove that that
2 enterprise, the Genovese family, had an ongoing formal or
3 informal structure that was defined in the first 10 or 11
4 paragraphs of the indictment: The boss, the underboss and
5 captains and crews and all the rest. The government would
6 have to prove all that.

7 The government would have to prove that your
8 association with that enterprise was meaningful, that you were
9 helpful to it, you knew what it was about, you were helpful in
10 continuing and furthering the objectives of the enterprise as
11 an associate of it.

12 Finally, the government would have to prove that
13 between those dates, January of 1990 and July of 2006, you and
14 others conspired to participate in the affairs of that
15 enterprise and the affairs of that family through a pattern of
16 racketeering activity.

17 A pattern of racketeering activity, Mr. Romanello,
18 means the commission of at least two of a variety of crimes
19 which I described in the statute, crimes which are related in
20 a meaningful way to the overall existence and continuity of
21 the enterprise, and the two racketeering acts, two crimes
22 which make up a pattern of racketeering activity was the
23 gambling crime and the extortion.

24 So let me ask you, Mr. Romanello, whether you were
25 associated with what I have described and what has been

1 charged as being an enterprise between 1990 and 2006?

2 MR. MCMAHON: Your Honor?

3 THE COURT: Go ahead.

4 MR. MCMAHON: We have prepared a written allocution.
5 I don't know whether it would be acceptable to Your Honor or
6 not, but I just advise the Court of that fact and he would be
7 prepared to state that and if there were additional questions
8 beyond that --

9 THE COURT: Okay. I'm familiar with the allocution.

10 MR. MCMAHON: Would that be acceptable to Your
11 Honor?

12 THE COURT: Pardon?

13 MR. MCMAHON: Would that be acceptable to Your
14 Honor?

15 THE COURT: I don't know. I would have to hear it,
16 but the fiction that the existence of these families is
17 something which is completely in doubt and something that one
18 doesn't allocute to by virtue of the rules, I've been through
19 that I don't know how many times, Mr. McMahon, over the past
20 20 some odd years.

21 Let me ask you, Mr. Romanello. I'm using the word
22 "enterprise." Were you associated with that enterprise that I
23 have defined for you sometime between 1990 and 2006?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And you were associated with it in some

1 meaningful way?

2 And I think that the existence of that enterprise as
3 affecting interstate commerce is something which, I take it,
4 the defense would not contest.

5 MR. MCMAHON: No, Judge. We concede that.

6 THE COURT: And Mr. Romanello, I want to ask you
7 whether you and others, that is, you and one or more other
8 people conspired, had an agreement, that at least one of you
9 would commit two of the racketeering acts which I described.

10 Did you and one or more others have an agreement, a
11 meeting of the minds that you would commit the crime of
12 bookmaking? Yes or no.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: That is, between or in or about 1999,
15 somewhere in the Eastern District, you and others knowingly
16 and intentionally were engaged in bookmaking which was
17 unlawful according to the laws of the State of New York to the
18 extent that you intended or conspired to receive and accept in
19 any one day more than five bets totaling more than \$5,000.

20 Is that true?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And with respect to Racketeering Act
23 Three, is it also correct that you and one or more others
24 agreed that at least one of you would commit the crime of
25 extortion, namely, you agreed that you were going to get money

1 from somebody who was known to the grand jury as John Doe No.
2 2 and you agreed that if he didn't pay, turn over, give you
3 the money that you were requiring him to give you, you
4 instilled in him the fear that if he didn't pay what he was
5 supposed to pay, he was going to be suffering some physical
6 injury?

7 You or one or more others agreed to that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And that happened in the Eastern
10 District of New York as well?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Is there anything further?

13 MS. HECTOR: Just one second, Your Honor.

14 THE COURT: Let me start with Mr. McMahon.

15 Is that allocution satisfactory to you, Mr. McMahon?
16 Is there anything I've forgotten or left out?

17 MR. MCMAHON: Well, the government may ask for
18 specificity on an overt act, and I would just point to the
19 June 5th conversation from the social club which makes
20 reference to it, where somebody was going to get punched in
21 the head.

22 THE COURT: With respect to Racketeering Act Three?

23 MR. MCMAHON: Yes, Judge. That would suffice as an
24 overt act.

25 THE COURT: The State of New York defines an overt

Proceeding

29

1 act in 55 or 59. The federal statute doesn't require an overt
2 act as far as the conspiracy law does. Is that what it is you
3 are going to call to my attention?

4 MS. HECTOR: Yes, it is, Your Honor.

5 THE COURT: So there was an overt act. You and
6 others had a conversation with respect to what would happen if
7 John Doe No. 2, that John Doe No. 2 know and become fearful of
8 what might happen if he didn't turn over the money. Is that
9 right?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Is there anything else?

12 MR. MCMAHON: Nothing, judge.

13 MS. HECTOR: No, Your Honor.

14 THE COURT: I've covered it all?

15 MS. MACE: Yes.

16 THE COURT: Mr. Romanello has been fully advised of
17 his rights. I understand he understood them. And with that
18 understanding, he knowingly and voluntarily pleaded guilty to
19 Count One and Racketeering Acts Two C and Three of an
20 indictment which is number 10-CR-929(S-1) and there is a
21 factual basis for it. I'll accept that.

22 THE CLERK: April 13th at 10:30 a.m. for sentencing.

23 MR. MCMAHON: That's fine, Your Honor.

24 Judge, I have one slight request to make.

25 As Your Honor knows, there was some, there had

1 earlier been set by a Magistrate a bail condition of no
2 association which is common.

3 At sentencing, we may address that issue with Your
4 Honor, both the government and the defense, but for purposes
5 of between now and the time of sentencing, there are two
6 individuals that Mr. Romanello has been friends with and their
7 wives and family are friends for 50 years.

8 I'd like to have the opportunity to have him
9 associate with them not for crimes or any other purpose, but
10 simply to have the association bail condition waived with
11 respect to two individuals between now and April 13th.

12 . The two individuals are Anthony Federici and
13 Junior Santiola, both of whom he grew up with and both of whom
14 he has known for 50 years.

15 MS. HECTOR: We have no objection to that.

16 THE COURT: So ordered.

17 MR. MCMAHON: Thank you, Judge.

18 THE COURT: Anything else?

19 MR. MCMAHON: That's it, Your Honor.

20 THE COURT: Thank you, Mr. McMahon.

21 Anything else?

22 MS. HECTOR: No, Your Honor. Thank you.

23 (Matter concluded.)
24
25